

Dear Senators LODGE, Lee, Burgoyne, and  
Representatives LUKER, Malek, Gannon:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the  
Sexual Offender Management Board:

IDAPA 57.01.01 - Rules of the Sexual Offender Management Board - Proposed Rule (Docket No.  
57-0101-1701).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 10/18/2017. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/16/2017.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the  
memorandum attached below.



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

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*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Judiciary & Rules Committee and the House Judiciary, Rules & Administration Committee

**FROM:** Principal Legislative Research Analyst - Ryan Bush

**DATE:** September 29, 2017

**SUBJECT:** Sexual Offender Management Board

IDAPA 57.01.01 - Rules of the Sexual Offender Management Board - Proposed Rule (Docket No. 57-0101-1701)

The Sexual Offender Management Board submits notice of proposed rulemaking at IDAPA 57.01.01 - Rules of the Sexual Offender Management Board. This rule change eliminates the incorporation by reference of the Code of Ethics and Practice Guidelines from the Association for the Treatment of Sexual Abusers (ATSA). References to ATSA are also removed throughout.

The Board states that negotiated rulemaking was not conducted because the rule change is simple in nature. There is no fiscal impact associated with this rulemaking.

The proposed rulemaking appears to be within the statutory authority granted to the Board in Section 18-8314, Idaho Code.

cc: Sexual Offender Management Board  
Aileen Lucas

## **IDAPA 57 – SEXUAL OFFENDER MANAGEMENT BOARD**

### **57.01.01 – RULES OF THE SEXUAL OFFENDER MANAGEMENT BOARD**

**DOCKET NO. 57-0101-1701**

#### **NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 18-8314, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2017.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

IDAPA 57.01.01, “Rules of the Sexual Offender Management Board,” will be modified to eliminate the following documents that are incorporated by reference: “Association for the Treatment of Sexual Abusers Professional Code of Ethics,” 2001 revision, and “Association for the Treatment of Sexual Abusers Practice Guidelines for the Assessment, Treatment and Management of Male Adult Sexual Abusers,” 2014 revision. References to “ATSA” will also be eliminated from administrative rule language. Similarly, references to the Association for the Treatment of Sexual Abusers and “ATSA” will be removed from the SOMB’s Standards and Guidelines for Adult Sexual Offender Management Practices and the Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders which are incorporated by reference into IDAPA 57.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

The SOMB does not anticipate any fiscal impact to the state general fund from the Rule changes resulting from this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, formal negotiated rulemaking was not conducted as the change is simple in nature. This rulemaking eliminates references and incorporated by reference documents related to the Association for the Treatment of Sexual Abusers.

However, the agency directly notified the impacted SOMB-certified psychosexual evaluators, sexual offender treatment providers and post-conviction sex offender polygraph examiners soliciting and reviewing feedback on emerging concerns prior to the decision to go forward with this rulemaking.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The Sexual Offender Management Board is legislatively mandated to establish standards, qualification and certification procedures for post-conviction psychosexual evaluations/evaluators; sexual offender treatment and the providers who offer these services; and post-conviction sexual offender polygraph examiners. Rulemaking authority was granted to the board to carry out these provisions.

The practice standards and certification qualifications established by the agency pursuant to Section 18-8314, Idaho Code, are compiled into documents entitled “Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices;” and “Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders;” which are both incorporated by reference into this rulemaking to give them the force and effect of law. These documents are not being reprinted in this chapter of rules due to their length and format as well as the cost for republication. They can be found on the agency’s website: <http://somb.idaho.gov>.

Previously incorporated by reference materials – “Association for the Treatment of Sexual Abusers Professional Code of Ethics,” 2001 revision; and “Association for the Treatment of Sexual Abusers Practice Guidelines for the Assessment, Treatment and Management of Male Adult Sexual Abusers,” 2014 are being eliminated in the proposed rulemaking. While the Association for the Treatment of Sexual Abusers remains a highly regarded international organization among the sexual offender management community, trending philosophical changes in methodologies utilized in the treatment and management of both adults and juveniles who have been convicted of committing sexual offenses seem to be trending away from standards compatible with Idaho practices. The SOMB does not view these trends as being beneficial to the safety and security of the citizens of Idaho, the criminal justice system or potential liabilities to the providers who are certified by this board. While certificate holders are not required by the standards and guidelines of the SOMB to be members of ATSA, the SOMB’s standards require certificate holders to adhere to ATSA’s standards.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Nancy Volle at (208) 658-2002.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2017.

DATED this 29th day of August, 2017.

Nancy Volle, Program Manager  
Sexual Offender Management Board  
1299 N. Orchard Street, Ste. 110  
Boise, ID 83706  
Phone: (208) 658-2002  
E-mail: [somb@idoc.idaho.gov](mailto:somb@idoc.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 57-0101-1701**  
**(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

The following documents are incorporated by reference into these rules: (3-20-14)

~~01. “Association for the Treatment of Sexual Abusers Professional Code of Ethics,” 2001 revision, is herein incorporated by reference and is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005, Website <http://www.atsa.com/>. (3-20-14)~~

~~02. “Association for the Treatment of Sexual Abusers Practice Guidelines for the Assessment, Treatment and Management of Male Adult Sexual Abusers,” 2014 edition, is herein incorporated by reference and is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005, website <http://www.atsa.com/>. (4-11-15)~~

**031.** “Bylaws and Constitution of the American Association of Police Polygraphists,” effective May, 2010, is herein incorporated by reference and is available from the American Association of Police Polygraphists, PO Box 657, Waynesville, Ohio 45068, website <http://www.policepolygraph.org/>. (3-20-14)

**042.** “Bylaws of the American Polygraph Association,” effective September 2015, is herein incorporated by reference and is available from the American Polygraph Association, PO Box 8037, Chattanooga, Tennessee 37414, website <http://www.polygraph.org/>. (3-24-17)

~~053.~~ **“Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices,”** December 2016~~7~~ revision, is herein incorporated by reference and is available from the Board’s office and on the Board website, <http://somb.idaho.gov/>. ~~(3-24-17)( )~~

~~064.~~ **“Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders,”** December 2016~~7~~ revision, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://somb.idaho.gov/>. ~~(3-24-17)( )~~

~~075.~~ **The Sexual Offender Management Board's “Required Format for Juvenile Psychosexual Evaluation Reports,”** December 2016 revision, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://somb.idaho.gov/>. (3-24-17)

~~086.~~ **The Sexual Offender Management Board’s “Required Format for Adult Psychosexual Evaluation Reports,”** December 2016 revision, is herein incorporated by reference and is available from the Board’s office and on the Board’s website, <http://somb.idaho.gov/>. (3-24-17)

**(BREAK IN CONTINUITY OF SECTIONS)**

**011. ABBREVIATIONS.**

- ~~01.~~ **APA.** The American Polygraph Association. (3-24-17)
- ~~02.~~ ~~*ATSA. The Association for the Treatment of Sexual Abusers.*~~ ~~(3-20-14)~~
- ~~032.~~ **DSM.** The “Diagnostic and Statistical Manual of Mental Disorders,” published by the American Psychiatric Association. (3-20-14)
- ~~043.~~ **IDOC.** The Idaho Department of Correction. (3-20-14)
- ~~054.~~ **IDJC.** The Idaho Department of Juvenile Corrections. (4-11-15)
- ~~065.~~ **PCSOT.** “Post conviction sexual offender testing” is specialized instruction beyond the basic polygraph training for the purpose of specific polygraph testing of post convicted sexual offenders. (3-24-17)
- ~~076.~~ **SOCB.** The Sexual Offender Classification Board. (3-20-14)
- ~~087.~~ **SOMB.** The Sexual Offender Management Board. (3-20-14)

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. STANDARDS FOR PROFESSIONAL CONDUCT AND CLIENT RELATIONS.**

**01. General Considerations for Certified Evaluators and Certified Treatment Providers.** Each person who is certified by the Board to conduct or assist with the conduct of psychosexual evaluations or provide sexual offender treatment shall: (3-20-14)

**a.** Adhere to the ethical principles and codes, and all practice standards and guidelines for the person’s respective discipline and area of professional licensure; (3-20-14)

~~**b.** Adhere to the ATSA treatment philosophy, the ATSA Professional Code of Ethics, and the ATSA Practice Guidelines, as referenced in Section 004 of these rules;~~ ~~(4-11-15)~~

**eb.** Be knowledgeable of statutes and scientific data relevant to specialized sexual offender evaluation and sexual offender treatment; (3-20-14)

**ec.** Be familiar with the statutory requirements for assessments and reports for the courts, pursuant to Section 18-8316, Idaho Code; (3-20-14)

**ed.** Be committed to community protection and safety; (3-20-14)

**ee.** Provide services in a manner that ensures humane and ethical treatment of clients; (3-20-14)

**ef.** Conduct testing in accordance with the person's licensing body, qualifications and experience, and in a manner that ensures the integrity of testing data; (3-20-14)

**eg.** Avoid relationships with clients that may constitute a conflict of interest, impair professional judgment and risk exploitation; and (3-20-14)

**eh.** Have no sexual relationships with any client. (3-20-14)

**02. General Considerations for Certified Post Conviction Sexual Offender Polygraph Examiners.**  
Each person who is certified by the Board to conduct post conviction sexual offender polygraph examinations shall: (3-20-14)

**a.** Adhere to the ethical principles and codes, and all practice standards and guidelines for the person's discipline, area of professional practice, or licensure as promulgated by any applicable regulatory board or licensing authority; (3-20-14)

**b.** Adhere to the standards and guidelines specific to post conviction sexual offender testing as promulgated by the APA; (3-24-17)

**c.** Adhere to the ethical principles and codes, and all practice standards and guidelines for the administration of polygraph examinations generally, as promulgated by the APA or the American Association of Police Polygraphists, as referenced in Section 004 of these rules; (3-24-17)

~~**d.** Adhere to the current practice standards and guidelines pertaining to post conviction sexual offender polygraphs within the context of sexual offender management as established by the ATSA, as referenced in Section 004 of these rules; (3-24-17)~~

**ed.** Avoid relationships with clients that may constitute a conflict of interest, impair professional judgment and risk exploitation; (4-11-15)

**ee.** Have no sexual relationships with any client; (3-24-17)

**ef.** Take factors such as age, mental capacity and co-occurring mental health concerns into consideration when utilizing polygraphy with juvenile offenders; (4-11-15)

**eg.** Be committed to community protection and safety; and (3-24-17)

**eh.** Provide services in a manner that ensures humane and ethical treatment of clients. (3-24-17)

## INCORPORATION BY REFERENCE SYNOPSIS

In compliance with Section 67-5223(4), Idaho Code, the following is a synopsis of the differences between the materials previously incorporated by reference in this rule that are currently of full force and effect and newly revised or amended versions of these same materials that are being proposed for incorporation by reference under this rulemaking.

The following agency of the state of Idaho has prepared this synopsis as part of the proposed rulemaking for the chapter cited here under the docket number specified:

***Sexual Offender Management Board***  
***IDAPA 57.01.01 - Rules Governing the Sexual Offender Management Board***  
***Proposed Rulemaking - Docket No. 57-0101-1701***

IDAPA 57.01.01 currently incorporates eight documents by reference. The SOMB is legislatively mandated to establish standards, qualification and certification procedures for post-conviction psychosexual evaluators/evaluations; sexual offender treatment and those providers; and post-conviction sexual offender polygraph examiners. The documents that have been incorporated by reference are directly related to this charge.

The following references will be *eliminated* in the proposed rulemaking due to trends in the organization's philosophical viewpoints related to methodologies utilized in the treatment and management of both adults and juveniles who have been convicted of committing sexual offenses. The Sexual Offender Management Board does not view these trends as being beneficial to the safety and security of the citizens of Idaho or the criminal justice system.

1. *"Association for the Treatment of Sexual Abusers Professional Code of Ethics,"* 2001 revision.
2. *"Association for the Treatment of Sexual Abusers Practice Guidelines for the Assessment, Treatment and Management of Male Adult Sexual Abusers,"* 2014 edition.

The following references will be *modified* in the proposed rulemaking:

1. *"Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices,"* December 2016 revision.
2. *"Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Sexual Offenders,"* December 2016 revision.

These documents are incorporated into IDAPA 57 to enable enforcement of the standards developed by the SOMB. The documents are being updated to eliminate references to the Association for the Treatment of Sexual Abusers (ATSA); and to incorporate a statement into the

SOMB-required Notice and Consent for Psychosexual Evaluation forms for adult and juvenile clients to provide authorization for release of psychosexual evaluations to the SOMB for quality assurance purposes.

There are no changes to the remaining incorporated references.